COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 20, 2007

APPLICATION OF

THE POTOMAC EDISON COMPANY
D/B/A ALLEGHENY POWER

CASE NO. PUE-2007-00085

For an increase in its electric rates pursuant
to Va. Code §§ 56-249.6 and 56-582

FINAL ORDER

On September 11, 2007, The Potomac Edison Company d/b/a/ Allegheny Power ("Allegheny," "AP," or "Company") filed an application with the State Corporation Commission ("Commission") in which it seeks to increase its Virginia retail electric rates ("Application"). The Application requested that the Commission approve the Company's recovery in rates of "a *portion* of the $102.6 million in projected purchased power costs for jurisdictional customers that arises from Allegheny serving its Virginia default load from July 1, 2007 through June 30, 2008."[1]

The Company requested "an annual increase for jurisdictional customers of approximately $44.9 million or an increase in rates of about 26%, when averaged across all jurisdictional rate classes."[2] Allegheny requested "that it be permitted to increase its rates by $0.01450 per kWh for all sales in Virginia beginning October 19, 2007" via a new "Levelized Purchased Power Factor" tariff filed with the Application.[3] Allegheny later revised this

[1] Application at 1 (emphasis in original).

[2] *Id.* at 6.

[3] *Id.* at 10; Valdes, Exh. 10 at REV_(6).

annualized revenue requirement to approximately $42.3 million.[4] The Company further stated that the "over-recovery or under-recovery of actual purchased power expense based on this incremental rate is subject to true-up, during the next annual fuel and purchased power recovery proceeding."[5]

The Company is seeking to recover an increment of its purchased power costs for its Virginia retail load that exceeds 367 MW. Specifically, Allegheny stated that it "has segmented its default service load for purposes of determining rates in this Application," and that "projected Load Above 367 MW will be served by the purchased power procured by the Company as of July 1, 2007."[6] The Company has proposed a methodology in this Application "by which the cost of serving the segment of Load Above 367 MW translates into the . . . increase for jurisdictional customers sought in this application."[7]

The Company further asserted that the relief sought in its Application is "consistent with the provisions of §§ 56-582 B and 56-249.6" of the Code of Virginia ("Code") and that "[a]llowing Allegheny to recover its costs for purchased power to serve Load Above 367 MW is not barred by the [Memorandum of Understanding ('MOU')][8] as the Commission itself interpreted that document in Case No. PUE-2007-00026, and is necessary to allow Allegheny to

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[4] Mader, Exh. 9.

[5] Application at 10-11.

[6] *Id.* at 6.

[7] *Id.*

[8] The MOU is part of the Commission's Order in 2000 approving Allegheny's requested divestiture of all of its generating units. *See Application of The Potomac Edison Co. d/b/a Allegheny Power*, Order Approving Phase I Transfers, Case No. PUE-2000-00280, 2000 SCC Ann. Rept. 530 (July 11, 2000). For reference purposes, a copy of the MOU is attached to Lamm, Exh. 13.

receive just and reasonable rate recovery and to avoid a California-like revenue shortfall."[9] The Company stated that "[t]his Application seeks modifications to the rate required by the MOU to effect an increase that reflects the increase in purchased power costs in Virginia to service the Load Above 367 MW."[10]

Finally, "for the reasons set forth [in the Application] and as allowed and supported by Virginia Code §§ 56-582.B and 249.6 and, if necessary, a modification of the MOU, or by any other legal theories or bases available to the Commission in its consideration of this Application, the Company requests that it be permitted to increase its rates . . . to reflect purchased power costs for the Load Above 367 MW, based on the blended costs of the continuing and unchanged 'unbundled frozen generation rate' for the Virginia load up to 367 MW and the projected purchased power costs to serve the Virginia Load Above 367 MW."[11]

On October 10, 2007, the Commission issued an Order for Notice and Hearing that, among other things, established a procedural schedule for this case, scheduled a public hearing for December 4, 2007, to receive testimony from members of the public and evidence on the Application, and required the Company to provide notice of its Application.

Notices of participation and comments were filed by the Division of Consumer Counsel of the Office of the Attorney General ("Consumer Counsel") and jointly by eighteen (18) local businesses working in coordination with the Frederick County Industrial Development Authority ("Consumers").[12]

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[9] Application at 7.

[10] *Id.*

[11] *Id.* at 10.

[12] Consumers identified the eighteen (18) businesses as follows: Baugh-NE (SYSCO); Berryville Graphics, Inc.; Crown Cork & Seal, Co.; Dupont; Green Bay Packaging, Inc.; H.P. Hood, Inc.; Monoflo International, Inc.; New World Pasta; O'Sullivan Films, Inc.; Pactiv; Quebecor World; R.R. Donnelley; Rubbermaid Commercial Products;

Consumer Counsel does not oppose the Company's legal ability to request a rate increase herein. Consumer Counsel states that it "has not taken the position that [AP] is foreclosed from a rate adjustment consistent with the MOU and Virginia law."[13] Consumer Counsel further asserts that Allegheny's "Application appears to seek the opportunity for a rate adjustment based on one interpretation of the MOU and Virginia law" and that "Consumer Counsel generally accepts this interpretation of the MOU and Virginia law for purposes of this Application permitting a rate adjustment at this time."[14] Consumer Counsel, however, "has identified two significant issues with the Company's methodology and assumptions for calculating the level the energy that would be supplied by its existing plants compared to how much would have to be purchased from the market" and "urges the Commission to require [AP] to provide further information in order to address [these] concerns. . . ."[15]

Consumers oppose the Application and state as follows:

> Because [AP] has no fuel factor mechanism, there is no mechanism under which it may seek any recovery for fuel or purchased power costs until the end of the capped rate period. The only relief available to [AP] is to file a base rate case. This is not what [AP] has filed.[16]

The Commission's Staff ("Staff") also filed comments. Staff "does not support approval of a rate change in this proceeding."[17] Staff's "position is that the relief sought by the Company

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Southeastern Container Corporation; The Shockey Companies, Inc.; Toray Plastics (America), Inc.; Trex Company; and Valley Health Systems.

[13] Consumer Counsel's November 16, 2007 Comments at 3 n.7.

[14] *Id.* at 4.

[15] *Id.* at 4, 7.

[16] Consumers' November 16, 2007 Comments at 3.

[17] Staff's November 16, 2007 Comments at 5.

herein is not 'allowed and supported by [Va. Code] §§ 56-582 B and 56-249.6,' as Allegheny's application claims."[18] In addition, Staff states that

> even if the Commission were to accept the questionable legal premise that [AP] is entitled to request recovery of its increased purchased power cost for the Load Above 367 MW, the Company has incorporated at least two major methodological errors, or inappropriate assumptions, in its five-step cost calculation, drastically increasing the rate relief requested in its application.[19]

Over 3,500 comments were submitted in opposition to the Application. The following members of the Senate of Virginia filed comments in opposition to the Application: the Honorable Emmett W. Hanger, Jr.; the Honorable Mark D. Obenshain; and the Honorable H. Russell Potts, Jr. The following members of the Virginia House of Delegates filed comments in opposition to the Application: the Honorable Clifford L. Athey, Jr.; the Honorable C. Todd Gilbert; the Honorable Matthew J. Lohr; the Honorable Joe T. May; the Honorable Edward T. Scott; and the Honorable Beverly J. Sherwood.

The public evidentiary hearing was held on December 4, 2007. The following public witnesses testified in opposition to the Application: Fred Thigpen, of Strasburg; Dennis McNutt, of Winchester; Wes Williams, of Winchester; Kevin Kaczmarzewski, of Winchester; Zachary Lauer, of Bristow; Patrick Barker, of Winchester; and Chris Caldwell, of Richmond.

Richard D. Gary, Esquire, Jeffrey P. Trout, Esquire, and Noelle J. Coates, Esquire, appeared on behalf of the Company. Jeannie A. Adams, Esquire, and Scott Johnson, Esquire, appeared on behalf of Consumers. C. Meade Browder, Jr., Esquire, and Kiva Bland Pierce, Esquire, appeared on behalf of Consumer Counsel. William H. Chambliss, Esquire, and

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[18] *Id.* at 2.

[19] *Id.* at 3.

Arlen K. Bolstad, Esquire, appeared on behalf of Staff. Robert B. Reeping, Mark A. Mader, and Raymond E. Valdes testified for Allegheny. Thomas E. Lamm testified for Staff.

NOW THE COMMISSION, having considered the record, the pleadings, and the applicable law, is of the opinion and finds as follows.

Memorandum of Understanding

Paragraph (2) of the MOU states as follows:

> Allegheny Power will not file an application to increase its base rates prior to January 1, 2001. Except for the fuel cost adjustments provided for in the July 18, 2000 Stipulation No. 2 filed in this proceeding, Allegheny Power agrees to forego any other fuel cost adjustments during the capped rate period. Exceptions to capped rates and the legislatively mandated rate freeze will continue as specified in the [Virginia Electric Utility Restructuring Act, Va. Code §§ 56-576 *et seq.*, ('Act' or 'Restructuring Act')] or as in the Act may be changed or modified. Revisions to rates due to permitted exceptions under the legislation will be based only on the incremental costs of those exceptions. Additional services currently not included in the rate cap level could be established under a separate proceeding.[20]

Paragraph (4) of the MOU states as follows:

> Allegheny Power will contract for generation sufficient to meet its default service obligations at rates set in accordance with the current Act or as the Act may be changed or modified until the Company's obligation to provide default service terminates. For ratemaking purposes, including any request to increase frozen rates due to financial distress, Virginia default service load will first be deemed to be served from a finite portion of the GENCO's generation facilities, in an amount up to 367 MW, which equals the Virginia load now reflected in the allocation of AP's generation costs to Virginia retail customers. During the rate cap period, pricing of the 367 MW will be based on the Virginia unbundled frozen generation rate. After the rate cap period, pricing of the 367 MW will be based on the then current generation costs of the portion of the existing system dedicated to serve retail Virginia load.[21]

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[20] MOU at 1.

[21] *Id.*

In approving Allegheny's requested divestiture under the terms of the MOU, the Commission explained that AP's rates would be established as follows:

> The Commission is further of the opinion and finds that the representations and undertakings set forth in the MOU, as supplemented, provide satisfactory assurance that the public interest will be protected and that the 'incumbent electric utility's generation assets or their equivalent' will remain available for electric service during the default service period. The Company has agreed during the capped rate period to price generation at its frozen unbundled generation rate. For the period in which it is obligated to provide default service following the expiration of the capped rate period, generation service rates will be based on the Company's then-current generation cost of the portion of that generating system that it makes use of to meet its default service load. Should GENCO[22] divest itself of any of the units, the Company agrees that on-going generation rates will reflect costs from those units at the time of their divestiture, escalated if necessary to reflect current costs.[23]

In addition, when the MOU was proposed by AP and approved by the Commission in 2000, capped rates were statutorily scheduled to expire, pursuant to § 56-582 of the Act, on or before June 30, 2007.[24] As a result, in eliminating AP's fuel factor pursuant to the MOU, the Commission explained that the resulting capped rates could extend to 2007:

> By asking that we eliminate its fuel factor mechanism, AP abandons the protection otherwise available to it under the Code and instead assumes the risk that it can recover its fuel expenses under the capped rate alone during this period of transition to a competitive market. Rates established to include the costs otherwise recovered through the fuel factor will be *capped until perhaps 2007.*[25]

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[22] GENCO is the affiliate of AP to which the Company proposed to transfer its generation assets.

[23] *Application of The Potomac Edison Co. d/b/a Allegheny Power*, Order Approving Phase I Transfers, Case No. PUE-2000-00280, 2000 SCC Ann. Rept. 530, 532 (July 11, 2000) (footnote added).

[24] *See, e.g.,* Application at 3.

[25] *Application of The Potomac Edison Co. d/b/a Allegheny Power*, Order Approving Elimination of Fuel Factor and Establishing Capped Rates, Case No. PUE-2000-00280, 2000 SCC Ann. Rept. 532, 533 (July 26, 2000) (emphasis added).

2004 Amendments to the Restructuring Act

In 2004, the General Assembly amended § 56-582 of the Act and extended the capped rate period to December 31, 2010.[26] In addition, when the General Assembly extended capped rates in 2004, it further modified § 56-582 in part as follows:

> The Commission may adjust such capped rates in connection with the following: (i) utilities' recovery of fuel and purchased power costs pursuant to § 56-249.6, and, if applicable, in accordance with the terms of any Commission order approving the divestiture of generation assets pursuant to § 56-590. . . .
> . . .
> Any adjustments pursuant to § 56-249.6 and clause (i) of this subsection by an incumbent electric utility that transferred all of its generation assets to an affiliate with the approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be effective only on and after July 1, 2007.[27]

Purchased Power Cost Recovery

The 2004 amendments to the Restructuring Act expressly permit certain adjustments to Allegheny's capped rates for recovery of purchased power costs:

- In 2004, when the General Assembly extended the capped rate period from 2007 to 2010, it modified the Act to allow adjustments to AP's "capped rates" for recovery of "purchased power costs."[28]

- The 2004 amendments speak directly to the timing of *Allegheny's* recovery of purchased power costs thereunder; specifically, any rate adjustments for *Allegheny* "shall be effective only on and after July 1, 2007."[29]

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[26] *See, e.g.,* Application at 3.

[27] Va. Code § 56-582 B.

[28] Va. Code § 56-582 B.

[29] *Id.* As quoted above, this explicit restriction applies to "an incumbent electric utility that transferred all of its generation assets to an affiliate with the approval of the Commission pursuant to § 56-590 prior to January 1, 2002. . . ." *Id.* Allegheny is the *only* electric utility in the Commonwealth that satisfies this criterion.

- The 2004 amendments also require that any such rate adjustment be "in accordance with" the MOU.[30]

Thus, under the Act, Allegheny may seek recovery, in accordance with the MOU, of purchased power cost adjustments effective on and after July 1, 2007.

The MOU, in turn, expressly allows for certain rate adjustments pursuant to subsequent modifications of the Act:

- Paragraph (2) of the MOU provides that AP will benefit from exceptions to capped rates "as specified in the [Act] *or as in the Act may be changed or modified.*"[31]

- Paragraph (4) of the MOU provides that AP will continue to meet its default service obligations "at rates set in accordance with the current Act *or as the Act may be changed or modified.*"[32]

- Paragraph (4) of the MOU also has specific ratemaking provisions tied to "367 MW, which equals the Virginia load now reflected in the allocation of AP's generation costs to Virginia retail customers."[33]

The 2004 amendments represent a change or modification to the Act recognized by, and "in accordance with," the MOU. Accordingly, we must next determine the *amount* of purchased power costs that AP may recover "in accordance with" the ratemaking provisions in Paragraph (4) of the MOU.

Allegheny calculates this amount as an annual $42.3 million, which represents a rate increase of approximately 25%.[34] Staff calculates this amount as annual $9.48 million, which is

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[30] *Id.*

[31] MOU at 1 (emphasis added).

[32] *Id.* (emphasis added).

[33] *Id.*

[34] *See, e.g.,* Allegheny's December 6, 2007 Response at 1-2; Mader, Exh. 15; Consumer Counsel's December 7, 2007 Response at 1.

supported by Consumer Counsel and represents an average rate increase of approximately 5.6% when averaged across all jurisdictional rate classes.[35] We find that Staff's calculation correctly implements the ratemaking requirements in Paragraph (4) of the MOU.[36] Specifically, the Company inappropriately applies a weighted-average capacity factor (of 65.7%) to the 367 MW set forth in the MOU; this effectively reduces the load covered by the MOU from 367 MW to 241 MW.[37] As explained by Staff, "[t]here are no provisions in the MOU suggesting that the 367 MW should be adjusted for actual generating unit dispatch, or for any other Company operating issues for that matter."[38] Furthermore, Staff notes that when the MOU was signed: (1) the 367 MW was developed largely for ratemaking purposes based on the twelve-month average jurisdictional monthly coincident peak loads consistent with AP's demand allocation to Virginia; (2) AP's jurisdictional non-coincident peak load was about 473 MW; (3) if a 15% reserve margin were assumed, the capacity required to serve that 473 MW would have been roughly 544 MW; and, as result (4) "the 367 MW already reflects a significant allowance for reasonable generation unit dispatch levels relative to the physical capacity that is actually required to serve Virginia jurisdictional load."[39] In any event, Paragraph (4) of the MOU establishes a pricing mechanism for load above *367 MW*, not for load above *a capacity factor-adjusted 367 MW*. In addition, we find that such calculation should utilize the actual

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[35] *See* Lamm, Exh. 14; Staff's December 6, 2007 Letter at 1; Consumer Counsel's December 7, 2007 Response at 1. The average rate increase for all classes is derived as follows: $9,484,708 (Lamm, Exh. 14), divided by $168,070,400 (Valdes, Exh. 10 at REV_(4) (current jurisdictional revenue)), equals approximately 5.6%.

[36] Staff, however, reiterated that it does not endorse any revenue increase in this proceeding. Staff's December 6, 2007 Letter at 2.

[37] Staff's November 16, 2007 Comments at 4; Lamm, Exh. 13 at 2.

[38] *Id.*

[39] Staff's November 16, 2007 Comments at 4-5; Lamm, Exh. 13 at 3.

weighted-average price of AP's current purchased power contracts as recommended by Staff Witness Lamm.[40]

As a result, we approve the Company's proposed Levelized Purchased Power Factor at an annual amount of $9,484,708, which equates to a charge of 0.306 cents per kWh effective for service rendered on and after the date of this Order.[41] The Levelized Purchased Power Factor tariff provision is designed to recover purchased power costs determined by the Commission to be appropriate for a period beginning the date of this Order. Any under- or over-recovery incurred under this Levelized Purchased Power Factor tariff for service rendered on and after the date of this Order shall be addressed in a subsequent rate proceeding, and the Company shall implement deferred accounting for this purpose, also effective on and after the date of this Order. Furthermore, on or before July 1, 2008, Allegheny shall file an application with the Commission for proposed recovery of purchased power costs for service rendered during the twelve-month period on and after July 1, 2008, and for treatment of any under- or over-recovery incurred under the Levelized Purchased Power Factor for service rendered on and after the date of this Order.

Consumers' Objections

Consumers assert that "[b]ecause [AP] has no fuel factor mechanism, there is no mechanism under which it may seek any recovery for fuel or purchased power costs until the end of the capped rate period. The only relief available to [AP] is to file a base rate case."[42] Staff further emphasizes that the MOU "eliminated the Company's fuel factor for the duration of the

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[40] *See* Lamm, Exh. 13 at 3; Exh. 14.

[41] $9,484,708 (Lamm, Exh. 14), divided by 3,095,260,624 kWh (Valdes, Exh. 10 at REV_(4) (projected annual jurisdictional kWh)), equals $.00306 per kWh.

[42] Consumers' November 16, 2007 Comments at 3.

capped rate period. . . ."[43] However, denying a rate increase herein under the auspice that AP "agree[d] to forego any other fuel cost adjustment during the capped rate period"[44] ignores the 2004 amendments to the Act and the express terms of the MOU. That is, as noted above, the 2004 amendments directly speak to increasing AP's capped rates for purchased power costs on and after July 1, 2007, and the MOU expressly allows capped rate changes pursuant to subsequent modifications of the Act.

Indeed, Consumers' position renders the 2004 amendments circular and pointless. Specifically, and as discussed above, the 2004 amendments grant AP purchased power cost adjustments (1) "only on and after July 1, 2007," (2) "pursuant to § 56-249.6" of the Code (*i.e.*, the statute instructing the Commission "to direct each company to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for that period. . ."), and (3) "in accordance with" the MOU.[45] Consumers assert that since AP agreed to eliminate its fuel recovery mechanism under the MOU, it cannot recover purchased power costs "in accordance with" the MOU. Under this logic, however, those 2004 amendments speaking to Allegheny would have no purpose or effect. To the contrary, today's Order is "in accordance with" the MOU; this Order implements the provisions of the MOU (i) permitting rate changes pursuant to subsequent modifications of the Act, and (ii) establishing ratemaking provisions for load above 367 MW in accordance with Paragraph (4) of the MOU.

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[43] Staff's November 16, 2007 Comments at 1.

[44] MOU at 1, Para. (2).

[45] Va. Code § 56-582 B.

Consumers also assert that the Commission should deny a rate increase in this case for the reasons set forth by the Commission in rejecting AP's prior rate request.[46] The analysis and precedent established by that prior case, however, are limited to the specific context of that case – *i.e.*, in which AP sought to re-institute a fuel factor in order to recover *all* of its purchased power costs, arguing that *all* of the pricing provisions in the MOU must end on July 1, 2007.[47] In that instance, the Commission explained "that amendments to the Act do not modify the pricing mechanisms in the MOU such that the Commission is legally required to re-institute a fuel factor recovery mechanism and to allow AP to recover all of its purchased power costs beginning July 1, 2007," and held that "neither Virginia nor federal law mandates that the MOU's rate provisions must end on July 1, 2007."[48] That case stands in contrast to the instant proceeding, whereby the Company requests, and the Commission grants, *limited* purchased power cost recovery pursuant to the 2004 amendments to the Act and the specific pricing provisions in the MOU applicable to load above 367 MW. Indeed, Consumer Counsel, which supports the rate increase approved herein, noted such distinction in both the prior[49] and the instant[50] proceeding.

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[46] *Application of The Potomac Edison Co. d/b/a Allegheny Power*, For an increase in its electric rates pursuant to Va. Code §§ 56-249.6 and 56-582, Case No. PUE-2007-00026, Order Denying Application (June 28, 2007) ("June 28, 2007 Order").

[47] *See id.* at 3, 20.

[48] *Id.* at 11, 23.

[49] *See, e.g., id.* at 5-6.

[50] *See, e.g.,* Consumer Counsel's November 16, 2007 Comments at 2-3, n.7; Consumer Counsel's December 7, 2007 Response at 1.

2007 Amendments to the Restructuring Act

In 2007, the General Assembly further amended the Act, shortened the capped rate period to December 31, 2008,[51] and provided that the "[a]vailability of default service shall expire upon the expiration or termination of capped rates."[52] In addition, Enactment Clause 5 to such legislation states as follows:

> That nothing in this act shall be deemed to modify or impair the terms, unless otherwise modified by an order of the State Corporation Commission, of any order of the State Corporation Commission approving the divestiture of generation assets that was entered pursuant to § 56-590 of the Code of Virginia.[53]

This enactment clause does not alter or prohibit our findings herein. As the Commission explained in AP's prior case, this enactment clause continues explicitly to preserve the MOU.[54] Likewise, the instant Order also preserves the MOU by implementing a rate change pursuant to the subsequent 2004 modifications to the Act and by implementing the ratemaking provisions of Paragraph (4) thereof. Moreover, this enactment clause in no manner modifies the 2004 amendments to the Act, which we must apply herein.

We note, however, that the 2007 amendments to the Restructuring Act also provide for the expiration of "default service." Specifically, Va. Code § 56-585 A states as follows: "Availability of default service shall expire upon the expiration or termination of capped rates." As noted above, and also as a result of the 2007 amendments, Va. Code § 56-582 F now provides that capped rates "shall expire on December 31, 2008. . . ." As a result, if capped rates expire at the end of 2008, then the "[a]vailability of default service" shall likewise expire at that time

[51] Va. Code § 56-582 F.

[52] Va. Code § 56-585.1 A.

[53] 2007 Va. Acts Ch. 888 and 933, 5th Enactment Clause.

[54] June 28, 2007 Order at 22-23.

pursuant to Va. Code § 56-585 A. This, in turn, obviously becomes relevant to the MOU, which provides that Allegheny "will contract for generation sufficient to meet its *default service* obligations at rates set in accordance with the current Act or as the Act may be changed or modified until the Company's obligation to provide *default service* terminates."[55]

We do not address herein the impact on the MOU – after 2008 – of the 2007 legislation discussed above. This question has not been litigated in this proceeding. For example, the parties have not addressed whether AP's obligations under the MOU terminate at the end of 2008 and, if so, under what statutory provisions the Commission must set AP's generation rates beginning in 2009. Conversely, the parties also have not addressed whether Enactment Clause 5 to such legislation purports to extend the MOU in perpetuity.

Therefore, we further direct that, as part of the Company's application required above on or before July 1, 2008, Allegheny shall set forth whether, and how, its proposed recovery of purchased power costs for service rendered on and after January 1, 2009, is in accordance with the MOU, the 2007 Amendments to the Act, and, if additional legislation is passed in the upcoming Session of the General Assembly, any 2008 amendments to the Act.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Allegheny's Application is granted in part and denied in part, as set forth herein.

(2) The Company shall implement a Levelized Purchased Power Factor of 0.306 cents per kWh, effective for service rendered on and after the date of this Order.

(3) Consistent with the findings made herein, the Company shall forthwith file with the Commission's Division of Energy Regulation a revised Levelized Purchased Power Factor tariff, effective for service rendered on and after the date of this Order.

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[55] MOU at 1, Para. (4).

(4) On or before 45 calendar days following the close of business each month, the Company shall submit a report, with supporting workpapers, to the Commission's Divisions of Energy Regulation and Public Utility Accounting detailing the actual Levelized Purchase Power Factor monthly and cumulative over- or under-recovery positions with respect to the increased purchased power costs approved herein.

(5) The Company shall implement deferred accounting effective on and after the date of this Order with respect to the over- or under-recovery of the increased purchased power costs approved herein.

(6) On or before July 1, 2008, Allegheny shall file an application with the Commission for proposed recovery of purchased power costs for service rendered during the twelve-month period on and after July 1, 2008, for treatment of any under- or over-recovery incurred under the Levelized Purchased Power Factor for service rendered on and after the date of this Order.

(7) This matter is dismissed.

CHRISTIE, Commissioner, Dissents:

If Allegheny is due a rate increase for purchased power costs above a floor of 367 MW, the majority's findings represent a well-reasoned approach that is preferable to that which Allegheny requested in its Application. I respectfully disagree, however, that Allegheny is due a rate increase at this time.

The 2007 Session of the General Assembly added the following enactment clause to Senate Bill 1416 and House Bill 3068:

> That nothing in this Act shall be deemed to modify or impair the terms, *unless otherwise modified by an order of the State Corporation Commission*, of any order of the State Corporation Commission approving the divestiture of generation assets that was

entered pursuant to § 56-590 of the Code of Virginia. (Emphasis added.)

Following the 2007 Session of the General Assembly, or later, following the issuance of our order in Allegheny's prior rate case last June,[56] Allegheny could have filed a petition with the Commission seeking specific modifications to the MOU, as referenced in the legislation above. To date, however, Allegheny has not done so.

In this proceeding, Allegheny does not propose specific modifications to the MOU, but instead seeks a rate increase for what it claims are purchased power costs above 367 MW. Allegheny says that it believes the existing MOU should be interpreted to allow such a rate increase, but also states that if the Commission needs to modify the MOU in order to grant its requested rate increase, the Commission should simply do so in whatever manner the Commission deems appropriate to justify granting Allegheny's rate increase.[57]

Allegheny can certainly request a rate increase for purchased power and/or fuel factor costs that it claims exceed a floor of 367 MW of power. Indeed, Allegheny can ask for all its purchased power/fuel factor costs. Such rate requests, however, must be made in the context of a broader petition by Allegheny proposing specific amendments to the MOU to allow for such rate increase requests, a petition in which Allegheny could proffer in return consumer protection proposals designed to replace or substitute for the capped rates (into which fuel factor costs were rolled) to which Allegheny agreed in 2000. Allegheny has not done so in this proceeding.

Thus I believe that the MOU – as it stands – precludes any recovery by Allegheny of its purchased power and/or fuel factor costs at this time.

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[56] *Application of The Potomac Edison Co. d/b/a Allegheny Power*, For an increase in its electric rates pursuant to Va. Code §§ 56-249.6 and 56-582, Case No. PUE-2007-00026, Order Denying Application (June 28, 2007).

[57] *See, e.g.,* Application at 10.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Richard D. Gary, Esquire, and Noelle J. Coates, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Thomas F. Hancock, III, Esquire, and Jeannie A. Adams, Esquire, Hancock, Daniel, Johnson & Nagle, P.C., P.O. Box 72050, Richmond, Virginia 23225; C. Meade Browder, Jr., Senior Assistant Attorney General, and Kiva Bland Pierce, Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Economics and Finance, Energy Regulation, and Public Utility Accounting.

A True Copy
Teste:
Joel H. Peck
Clerk of the
State Corporation Commission